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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

PAMELA GALE SHELDON and RYAN DANIEL SHELDON, individually and as
Co-Personal Representatives of the Estate of
BILL JACK SHELDON, deceased;

Plaintiffs,

v.

CH MURPHY/CLARK-ULLMAN, INC.;
CLEAVER-BROOKS, INC.,
f/k/a AQUA-CHEM, INC. d/b/a CLEAVER-
BROOKS DIVISION;
USNR, LLC,
as successor-in-interest to THE COE
MANUFACTURING COMPANY;

Defendants.

Case No. 1:19-CV-01443-MC

**PLAINTIFFS' FIFTH AMENDED
COMPLAINT FOR WRONGFUL
DEATH AND SURVIVORSHIP
(STRICT LIABILITY;
NEGLIGENCE; AND LOSS OF
CONSORTIUM)**

DEMAND FOR JURY TRIAL

**CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION**

Prayer Amount: \$50,000,000

ORS 21.160(1)(e)

1.

Plaintiffs allege at all material times:

- a) Defendant, **CH MURPHY/CLARK-ULLMAN, INC.** was and is an Oregon corporation, registered to do business in the State of Oregon, with its principal place of business in Portland, Oregon. At all times material hereto, CH MURPHY/CLARK ULLMAN, INC. mined, manufactured, processed, imported, converted, compounded supplied, installed, replaced, repaired, used, and/or retailed asbestos and/or asbestos-containing products, materials, or equipment, including but not limited to asbestos-containing insulation materials. Plaintiffs' claims against CH MURPHY/CLARK-ULLMAN, INC. arise out of this Defendant's business activities in the State of Oregon.
- b) Defendant, **CLEAVER-BROOKS, INC.** (*f/k/a* AQUA-CHEM, INC. *d/b/a* Cleaver-Brooks Division), was and is a Delaware corporation, not registered to do business in the State of Oregon, with its principal place of business in Thomasville, Georgia. At all times material hereto, CLEAVER-BROOKS, INC. was engaged in either the mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Cleaver-Brooks boilers. CLEAVER-BROOKS, INC. is sued as a Product Defendant. Plaintiffs' claims against CLEAVER-BROOKS, INC. arise out of this Defendant's business activities in the State of Oregon.
- c) Defendant, **USNR, LLC** (*as successor-in-interest to THE COE MANUFACTURING COMPANY*), was and is a Delaware limited liability company with its principal place of business in Woodland, Washington. At all times material

hereto, USNR, LLC was engaged in either the mined, manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, asbestos-containing Coe dryers. USNR, LLC is sued as a Product Defendant. Plaintiffs' claims against USNR, LLC arise out of this Defendant's business activities in the State of Oregon.

2.

Plaintiff, Pamela Gale Sheldon, is the duly appointed Co-Personal Representative of the Estate of Bill Jack Sheldon (deceased), and a resident of the Oregon. Plaintiff, Ryan Daniel Sheldon, is the duly appointed Co-Personal Representative of the Estate of Bill Jack Sheldon (deceased), and is a resident of Oregon. Decedent Bill Jack Sheldon was diagnosed with mesothelioma, a cancer of the lining of the lungs caused by exposure to asbestos.

3.

At all material times:

The Defendants manufactured, sold, and/or distributed asbestos, asbestos-containing products and/or materials for use in Oregon. At all times relevant to this action, the Defendants and the predecessors of the Defendants for whose actions the Defendants are legally responsible, were engaged in the manufacture, sale, and distribution of asbestos-containing products, material, and/or raw material. ORCP 4D(2).

4.

At all times relevant to this action, Defendants conducted regular and sustained business activities in the State of Oregon out of which the claims for relief arose. ORCP 4A(4).

5.

Decedent BILL JACK SHELDON died from mesothelioma on July 24, 2018. This complaint is filed within the applicable statute of limitations.

6.

Decedent BILL JACK SHELDON was exposed to asbestos-containing products and equipment containing asbestos materials which was manufactured, supplied, distributed and/or specified by Defendants. Decedent BILL JACK SHELDON was exposed to airborne asbestos fibers, both directly working with asbestos and asbestos-containing materials and by working in the vicinity of other workers handling asbestos products from approximately 1972 to 1994 (See Exhibit A). From 1972 to 1994, Decedent worked as a core feeder on the Layup Line at the KOGAP Plywood/Veneer Mill in Medford, Oregon. This involved working with and around hot presses, cold presses, rollers, conveyors and heating equipment exposing him to dust from asbestos-containing products.

FIRST CLAIM FOR RELIEF

(Strict Liability)

7.

Plaintiffs re-allege paragraphs 1-6.

8.

The asbestos fibers, asbestos-containing products, and equipment utilizing asbestos-containing products of the defendants were unreasonably dangerous and defective in that:

- a) Defendants did not provide sufficient warnings and/or instructions about harm caused by exposure to Defendants' asbestos fibers, asbestos-containing products and equipment utilizing asbestos-containing products;
- b) The asbestos fibers in the asbestos-containing products and equipment utilizing asbestos-containing products of Defendants were capable of causing mesothelioma when inhaled by individuals, including Decedent BILL JACK SHELDON, making them unreasonably dangerous to the ordinary consumer; and
- c) Individuals, including Decedent BILL JACK SHELDON, who came into contact with asbestos fibers, were not advised to utilize proper respiratory protection when exposed to airborne asbestos fibers within their working environment.

9.

As a result of Decedent's exposure to the unreasonably dangerous and defective asbestos-containing products manufactured, distributed, sold, installed, applied or containing the Defendants' asbestos fiber, Decedent contracted mesothelioma, from which he died. Decedent's Estate suffered non-economic damages for the loss of society and companionship, grief, anguish, and for the conscious pain and suffering sustained by the Decedent prior to his death, to the Decedent's Estate's non-economic damage in the amount of \$49,000,000.

10.

As a result of Decedent's exposure to the unreasonably dangerous and defective asbestos-containing products manufactured, supplied, distributed, sold, installed, applied or containing the Defendants' asbestos fiber, Decedent contracted mesothelioma, from which he died. Decedent's Estate has suffered economic damages for medical bills, funeral and burial expenses, and lost earning capacity in the amount of \$1,000,000.

11.

As a result of Decedent's exposure to the unreasonably dangerous and defective asbestos-containing products manufactured, distributed, sold, installed, applied or containing asbestos fiber, Decedent contracted mesothelioma, from which he died. Decedent's Estate suffered non-economic damages for the loss of society and companionship, grief, anguish, and for the conscious pain and suffering sustained by the Decedent prior to his death, to the Decedent's Estate's non-economic damage in the amount of \$49,000,000.

12.

As a result of Decedent's exposure to the unreasonably dangerous and defective asbestos-containing products manufactured, distributed, sold, installed, applied or containing the Defendants' asbestos fiber, Decedent contracted mesothelioma, from which he died. Decedent's Estate has suffered economic damages for medical bills, funeral and burial expenses, and lost earning capacity in the amount of \$1,000,000.

SECOND CLAIM FOR RELIEF

(Negligence)

13.

Plaintiffs re-allege paragraphs 1-12.

14.

Defendants were negligent generally and in one or more of the following particulars:

- a) Defendants did not provide sufficient or adequate warnings and/or instructions of the harm caused by exposure to Defendants' asbestos-containing products and equipment utilizing asbestos-containing products. Defendants, prior to the period

of Decedent's exposure to asbestos, possessed information concerning the adverse effects and disease-producing capabilities of those products and equipment;

- b) Defendants failed to withdraw asbestos-containing products and equipment utilizing asbestos-containing products from the market prior Decedent's exposure, when Defendants possessed information concerning the adverse effects and disease-producing capabilities of those products and equipment;
- c) Defendants failed to determine the level of airborne asbestos fibers emitted by their products and equipment when the products and equipment were being used by the end user;
- d) Defendants failed to conduct tests to determine the amount of asbestos to which Decedent BILL JACK SHELDON, or similarly situated workers, would be exposed, when workers engaged in the use of these products and equipment; and
- e) Defendants failed to warn individual workers, including Decedent, regarding the hazards associated with the use of their asbestos-containing products and equipment utilizing asbestos-containing products.

15.

As a result of Defendants' negligence as set forth above, Decedent contracted mesothelioma, from which he died. Decedent's Estate suffered non-economic damages for the loss of society and companionship, grief, anguish, and for the conscious pain and suffering sustained by the Decedent prior to his death, to the Decedent's Estate's non-economic damage in the amount of \$49,000,000.

16.

As a result of Defendants' negligence as set forth above, Decedent contracted mesothelioma, from which he died. Decedent's Estate has suffered economic damages for medical bills, funeral and burial expenses, and lost earning capacity in the amount of \$1,000,000.

17.

Plaintiffs demand a jury trial.

WHEREFORE, Plaintiffs pray for judgment as follows:

FIRST CLAIM FOR RELIEF (Strict Liability):

1. Non-economic damages in an amount to be ascertained at trial but not to exceed \$49,000,000.
2. Economic damages in an amount to be ascertained at trial but not to exceed \$1,000,000.
3. Plaintiffs' costs and disbursements incurred herein.
4. Any other costs this court deems equitable.

SECOND CLAIM FOR RELIEF (Negligence):

1. Non-economic damages in an amount to be ascertained at trial but not to exceed \$49,000,000.
2. Economic damages in an amount to be ascertained at trial but not to exceed \$1,000,000.
3. Plaintiffs' costs and disbursements incurred herein.
4. Any other costs this court deems equitable.

DATED: September 28, 2021.

DEAN OMAR BRANHAM SHIRLEY, LLP

/s/ Benjamin H. Adams

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2021, the attached Plaintiffs' Fifth Amended Complaint was electronically filed and served on all counsel of record.

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/s/ Chelsea Weeks
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